

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

DAVID GROVES,

Respondent.

NO. 03-056

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, DAVID GROVES, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through SUSAN HARRIS, Executive Director. The following stipulated facts, conclusions, and agreed order will be binding upon the parties if fully executed and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation.

Section 1: PROCEDURAL FACTS

1.1. On May 6, 2003, the Executive Ethics Board (Board) received a complaint alleging that David Groves, an employee of the Washington State Department of Licensing, misused state resources by including a non-state email address and a commercial web address in his signature block on 12 official Department of Licensing (DOL) emails.

1.2. The Board is authorized under RCW 34.05.060 to establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

1.3. David Groves understands that if Board staff proves any or all of the alleged violations at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of

anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.4. David Groves recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Groves violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

1.5. David Groves waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

1.6. If the Board accepts this stipulation, the Board will release and discharge David Groves from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the agreed order. Mr. Groves in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation and agreed order.

1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Mr. Groves and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.8. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.9. If the Board rejects this stipulation, or if David Groves does not accept the Board's proposed modification(s), if any, Mr. Groves waives any objection to participation at any subsequent hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Mr. Groves understands and agrees that this proposed stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDINGS OF FACT

2.1. When the complaint in this matter was filed, and at all times material hereto, the Washington State Department of Licensing employed David Groves as an Office Assistant Senior in the Accident Processing Unit.

2.2. A review of Mr. Groves' DOL computer revealed 12 official DOL emails that included a non-state email address and a commercial web address in his signature block. The signature block on those emails read:

Dave Groves – Work 902-4012
travelwizards@yahoo.com
www.cruisetours.homestead.com
"Sun Happens"

2.3. The email and commercial website addresses included in Mr. Groves' work email signature block directed email recipients to his home email and personal, commercial website.

2.4. The emails referenced in paragraphs 2.2 and 2.3 above were created during the period April 22, 2003 to May 21, 2003.

2.4 Mr. Groves has a lengthy history, dating back to July 1995, of corrective action taken against him for inappropriate use of DOL's email system. Corrective actions previously taken include: a counseling memo (7/95); two Letters of Reprimand (7/96 and 10/02); three verbal counseling sessions (5/01, 2/02 by supervisor; 2/02 by DOL's Ethics Coordinator); and the

inclusion in two of Mr. Groves' Employee Development Plans of a statement that he would only use the agency's email system for DOL business (3/02 and 12/02).

2.5 On October 29, 2002, Mr. Groves signed a "Statement of Acknowledgment, Department of Licensing Ethics Policy," which stated that he had read DOL's ethics policy and that he would not at any time or in any manner, directly or indirectly, violate DOL's ethics policy, RCW 42.52 and/or WAC 292-110.

2.6 By letter dated May 30, 2003, DOL Assistant Director of Driver Services, Denise Movius, informed Mr. Groves that the agency was contemplating discipline up to and including dismissal for neglect of duty and insubordination based upon the 12 emails sent by Mr. Groves between April 22, 2003 and May 21, 2003. On June 18, 2003, Ms. Movius met with Mr. Groves to provide him with the opportunity to present additional information and/or mitigating circumstances against the agency taking any disciplinary action. Mr. Groves explained that his home email and commercial website addresses were included in his DOL email signature block so that DOL employees could contact him at home regarding union-related business. At that time, Mr. Groves was a union political action co-chair.

2.7 By letter dated July 1, 2003, Mr. Groves was notified that his salary would be reduced \$114 per month for the period July 16, 2003 through December 15, 2003 as a disciplinary action.

2.8 Mr. Groves is still employed by the Department of Licensing.

Section 3: CONCLUSIONS OF LAW

3.1 Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over David Groves and over the subject matter of this complaint.

3.2 Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

3.3 A state officer or employee is prohibited under RCW 42.52.160 from using state property "under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee or another."

3.4. Based on Findings of Fact 2.2 through 2.4, David Groves used state resources in violation of RCW 42.52.160.

3.5. WAC 292-110-010(6)(a) explicitly prohibits the private use of state resources by state employees for the purpose of conducting an outside business or private employment.

3.6. Based on Findings of Fact 2.2 through 2.4, David Groves used state resources in violation of WAC 292-110-010(6)(a).

3.7 The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 92-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors. It is a mitigating factor that Mr. Groves' salary was reduced \$114 per month from July 16, 2003 through December 15, 2003 as a disciplinary action. (WAC 292-120-030(4)(a)). Mr. Groves' lengthy history, dating back to July 1995, of corrective actions taken against him for inappropriate use of DOL's email system is an aggravating factor. See Finding of Fact 2.4 above. (WAC 292-120-030(3)(a)).

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4.1. Mr. Groves will pay a civil penalty in the amount of five hundred twenty-five dollars (\$525). The civil penalty of \$525 is payable to the state Executive Ethics Board and must be paid in full within twelve (12) months of approval of this Stipulation and Order by the Board.

I, David Groves, hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter; and if the Board accepts the Stipulation and Agreed Order, I understand that I will receive a signed copy.

Stipulated to and presented by:

Date _____

IV. ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is:

✓ ACCEPTED in its entirety;

REJECTED in its entirety;

MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

DATED this 10th day of March, 2006.

Trish Akana
Trish Akana, Chair

Approved via telephone
Evelyn Yenson, Vice Chair

Approved via telephone
Paul Zellinsky, Member

Judith Golberg
Judith Golberg, Member

Neil Gorrell
Neil Gorrell, Member

* I, David Groves, accept/do not accept (circle one) the proposed modification(s).

David Groves, Respondent Date